



## POLICE DEPARTMENT

June 6, 2018

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In the Matter of the Charges and Specifications	:	Case Nos.
- against	:	2016-15210
Police Officer Dana Harge	:	2016-16225
Tax Registry No. 933832	:	2016-16449
Police Service Area 9	:	

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At:                   Police Headquarters  
                        One Police Plaza  
                        New York, New York 10038

Before:              Honorable Jeff S. Adler  
                        Assistant Deputy Commissioner Trials

### APPEARANCES:

For the Department:     Javier Seymore & Kachina Brock, Esqs.  
                                  Department Advocate's Office  
                                  One Police Plaza  
                                  New York, NY 10038

For the Respondent:     Fred Lichtmacher, Esq.  
                                  116 West 23<sup>rd</sup> Street, Suite 500  
                                  New York, NY 10011

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

## CHARGES AND SPECIFICATIONS

### Disciplinary Case No. 2016-15210

1. Said Police Officer Dana Harge, while assigned to Highway District 3, while on-duty, on or about August 14, 2014, in Queens County, did fail and neglect to make proper activity log entries regarding the operability of the Mobile Video Recorder inside his assigned Radio Marked Patrol vehicle.

P.G. 212-08

ACTIVITY LOGS  
HIGHWAY DISTRICT DRIVER  
TRAINING UNIT'S STUDENT MANUAL

### Disciplinary Case No. 2016-16225

1. Said Police Officer Dana Harge, while assigned to Highway Unit, on or about August 6, 2016, while off-duty, in [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Harge wrongfully engaged in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5    PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

2. Said Police Officer Dana Harge, while assigned to Highway Unit, on or about August 6, 2016, while off-duty, in [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Harge broke a cell phone belonging to Person A.

P.G. 203-10, Page 1, Paragraph 5    PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

3. Said Police Officer Dana Harge, while assigned to Highway Unit, on or about August 6, 2016, while off-duty, in or about [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Harge wrongfully grabbed and tossed the cell phone belonging to Person A while she was attempting to dial 9-1-1.

P.G. 203-10, Page 1, Paragraph 5    PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

4. Said Police Officer Dana Harge, while assigned to PSA 9, on or about February 24, 2017, while on-duty, in New York County, New York, did wrongfully and without just cause interfere with an official Department investigation. *(As amended)*

P.G. 203-10, Page 1, Paragraph 2(D) PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

### Disciplinary Case No. 2016-16449

1. Said Police Officer Dana Harge, while assigned to Highway Unit #3, on May 17, 2015, while on-duty, was discourteous to New York City Police Lieutenant Jonathan Lipke, in that said Police Officer Harge walked away from said Lieutenant Lipke after being

instructed to provide his Activity Log and screamed in a loud and boisterous manner, "What the hell is this? Is this a goddamn race thing!"

P.G. 203-09, Page 1, Paragraph 2    PUBLIC CONTACT-GENERAL  
REGULATIONS

2. Said Police Officer Dana Harge, while assigned to Highway Unit #3, on May 17, 2015, while on-duty, did fail and neglect to make proper entries in said Police Officer's Activity Log, as required.

P.G. 212 08, Pages 1 and 2    ACTIVITY LOGS-COMMAND  
OPERATIONS

3. Said Police Officer Dana Harge, while assigned to Highway Unit #3, on July 12, 2015, while on-duty, did fail and neglect to remain alert, to wit: said Police Officer was observed sleeping in the Officer's Lounge while the Queens County District Attorney's Office was attempting to contact him for fifty (50) minutes.

P.G. 203-05, Page 1, Paragraph 1    PERFORMANCE ON DUTY – GENERAL

4. Said Police Officer Dana Harge, while assigned to Highway Unit #3, on May 27, 2016, while on duty, did fail and neglect to monitor his radio resulting in said Police Officer failing to respond to an open job. (*As amended*)

P.G. 202-21, Page 1, Paragraph 19    DUTIES AND RESPONSIBILITIES-  
POLICE OFFICER

5. Said Police Officer Dana Harge, while assigned to Highway Unit #3, on June 2, 2016, while on-duty, was absent from said assignment without permission or police necessity for approximately one (1) hour in the confines of the 111th Precinct.

P.G. 203-05, Page 1, Paragraph 2    PERFORMANCE ON DUTY-GENERAL  
REGULATIONS

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 17, 18, and May 4, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Deputy Inspector Sylvester Ge, Lieutenants Jonathan Lipke and Marc Levine, Police Officer Michael Rosenberg, Captain Brian Bohannon and Sergeant Marni Schwager as witnesses. Respondent called Sergeant Valentin Khazin as a witness, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is

available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

**Case No. 2016-15210:**

Specification 1 (activity log entries regarding MVR): Guilty.

**Case No. 2016-16225:**

Specification 1 (off-duty physical altercation): Guilty.

Specification 2 (damaged cell phone): Guilty.

Specification 3 (interfered with 911 call): Guilty.

Specification 4 (interfered with investigation): Not Guilty.

**Case No. 2016-16449:**

Specification 1 (disrespect): Guilty.

Specification 2 (activity log regarding summonses): Not Guilty.

Specification 3 (failure to remain alert): Guilty.

Specification 4 (failure to monitor radio): Guilty.

Specification 5 (absent from assignment): Not Guilty.

Recommended penalty: 31 suspension days previously served, 20 vacation days, and 1-year dismissal probation.

## ANALYSIS

This matter involves various allegations of misconduct against Respondent stemming from three separate cases. In the first matter, Respondent is accused of not making a notation in his memo book regarding the operability of his vehicle's video recorder, which came to light after a motorist accused him of improper behavior. In the second case, Respondent is charged with an off-duty physical altercation with Person A, during which he allegedly pushed her to the ground. He also interfered with her ability to call 911, damaging her phone in the process. The third matter deals with various, unrelated allegations, including courtesy toward a

supervisor, failure to remain alert while on duty, failure to monitor his radio, and being off-post without permission for approximately one hour.

At trial, Respondent disputed the factual allegations against him. He also argued that the actions of his supervisors, as well as their trial testimony, were influenced by their bias against him within Highway 3. Specifically, Respondent testified that he was one of only three African Americans assigned to Highway 3 in 2014. According to Respondent, after receiving a Mothers Against Drunk Driving award in May of 2014 for making the most DWI arrests in New York State the preceding year, he started to receive unfavorable treatment from the Commanding Officer of Highway 3, Captain Morgan, as well as the ICO, Lieutenant Lipke. Respondent testified that was placed under purposeful scrutiny from his supervisors, and that he was written up for alleged violations that were not legitimate. (Tr. 430-33, 435-36)

Respondent also called Sergeant Valentin Khazin as a witness, who confirmed that there was a concerted effort within the command to make it difficult for Respondent to perform his job effectively. Sergeant Khazin, who acknowledged facing his own disciplinary charges in three pending cases, testified that he was one of Respondent's supervisors at Highway 3 for approximately 11 months beginning in July of 2015. During that time, Respondent "was given an insurmountable amount of scrutiny, but he managed to work through it." (Tr. 335-36, 371-73) Sergeant Khazin offered specific examples of how Respondent was treated by some of the witnesses who testified at this trial; those observations will be discussed in the relevant sections below.

Respondent filed an EEOC complaint on August 26, 2015. (Tr. 504) He and Sergeant Khazin each have pending lawsuits against the Department based on their accusations of racial bias and workplace misconduct, and so their claims will be litigated more fully in another forum. Here, Respondent's contention of racial bias will be assessed only with reference to the specific

charges against him, and on the issue of witness credibility. Each of the three cases will be considered separately.

Case No. 2016-15210

Specification 1 alleges that on August 14, 2014, Respondent failed to make proper activity log entries regarding the operability of the Mobile Video Recorder ("MVR") inside his patrol vehicle. Deputy Inspector Sylvester Ge, who at the time of the incident was the Commanding Officer of IAB Group 27, testified that he was investigating the complaint of a female motorist, who alleged that [REDACTED].<sup>1</sup> As part of that investigation, the deputy inspector sought to review any records Respondent might have of the encounter, including a video recording. However, Deputy Inspector Ge discovered that there was no such recording. The deputy inspector also reviewed Respondent's activity log for the day (Dept Ex. 3), but there was no entry regarding the operability of the MVR. (Tr. 38-39, 47-50, 103)

Deputy Inspector Ge reviewed an attendance record indicating that Respondent was present for a Highway District driver training class on December 13, 2007 (Dept. Ex. 2). According to the deputy inspector, as part of that training Respondent had received instruction consistent with that which is outlined in the Highway RMP camera operation lesson plan (Dept. Ex. 1). The training instructed officers that after roll call, they are required to check whether the recording device in their vehicle is working, and note the results of that check in their memo book. If there is a problem with the camera, officers must report that to the desk officer. Officers also are instructed to activate the cameras for all traffic stops and interactions with the

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<sup>1</sup> Since Respondent is not charged with any misconduct connected to the traffic stop, the testimony regarding the stop was admitted only to provide context to the investigation, and not as a prior bad act of Respondent.

public. (Tr. 40-46) Additionally, prior to this incident Respondent had been instructed on the MVR activity log requirements in connection with another disciplinary matter. (Tr. 135)

Deputy Inspector Ge acknowledged that he was named as a defendant in a lawsuit filed by Respondent, in which Respondent alleged discrimination. Notwithstanding this lawsuit, the deputy inspector maintained that he remains "indifferent" toward Respondent. (Tr. 97, 109-10, 132 133)

Respondent testified he did not realize that the MVR was not working that day. Since he was under the impression that the equipment was operable, he did not make any notation in his activity log about it. He also claimed he did not recall receiving training that he was required to make a memo book entry at the start of each tour regarding the operability of the MVR. (Tr. 475-476, 543-46)

The credible evidence has established that Respondent failed to make the required entry in his memo book, contrary to the training he received. Deputy Inspector Ge credibly testified regarding how Respondent failed to make a notation in his memo book that the recording device was not working. The activity log in evidence (Dept. Ex. 3) confirms the absence of any such entry.

Moreover, I am not persuaded that racial bias played any role in this incident. This was not a case where the deputy inspector was targeting Respondent by arbitrarily inspecting his activity log. Rather, it was the complaint of the female motorist that instigated the investigation, which was spearheaded by IAB, not Highway 3. Indeed, it would have been irresponsible for the Department not to pursue the allegations made by the motorist. The missing memo book entry was discovered during the course of this investigation. Accordingly, I find Respondent guilty of Specification 1.

Case No. 2016-16225

It is alleged that on August 6, 2016, Respondent engaged in an off-duty physical altercation with [REDACTED], Person A, outside of Respondent's home in [REDACTED] [REDACTED]. Specifically, it is alleged that he pushed her to the ground causing scrapes to her elbow, and that he prevented her from calling 911 by grabbing her cell phone and throwing it to the ground, thereby damaging the screen of the phone.

The Department Advocate represented that his office was unsuccessful in its multiple attempts to contact Person A, and she did not appear to testify. Instead, the Department Advocate introduced into evidence an audio recording, with the accompanying transcript, of the Department's interview of Person A on the date of the incident (Dept. Exs. 5, 5A). Also introduced were a [REDACTED] [REDACTED] purportedly signed by Person A that day (Dept. Ex. 6), as well as photographs depicting scrapes to her elbow, a tear to her dress, and damage to the screen of her cell phone (Dept. Exs. 7a-f). Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1<sup>st</sup> Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statement of Person A, and reviewed the accompanying transcript, the [REDACTED], and the photographs taken by the responding officers.

Captain Brian Bohannon, the duty captain [REDACTED] testified that he responded to the [REDACTED] [REDACTED] on August 6, and was present for the recorded interview of Person A, and he reviewed the [REDACTED]. He described Person A as "timid" and "fearful" at the

precinct, but she was cooperative with the investigation. The captain saw that Person A had some slight bruising and reddish marks on her arm, though at the time of the interview she did not seek medical attention. He also observed her torn dress, and that her phone had a cracked screen. (Tr. 266-68, 271, 285-87, 301-02, 304, 412-13, 416, 420, 426) According to Captain Bohannon, Respondent was arrested [REDACTED], leading to his suspension. (Tr. 272, 303)

In her recorded statement, Person A stated that [REDACTED]

[REDACTED] After not responding to her calls or texts for several days, Respondent texted Person A that he was leaving the hospital and was okay; Respondent provided no further details. Concerned for his well-being, Person A went to his home to check on Respondent. She rang the bell to the front door, but Respondent answered her by opening the garage door, which was unusual. She did not know if he had someone else with him inside the house. (Dept. Ex. 5A at 3-5, 7)

According to Person A, Respondent cursed at her and demanded to know why she was there. Person A was shocked and asked why he was acting like that. Respondent told her to get off his property, and he pushed her, causing her to fall to the ground. As Person A was attempting to call 911, Respondent took her cell phone from her hands, canceled the call, and threw the phone to the ground, causing the screen to crack. Respondent then retrieved the phone from the ground before Person A was able to, and told her that if she left his property he would return the phone. Respondent threw the phone inside her car, and Person A eventually got back in her car and drove to the precinct to report the incident. (Dept. Ex. 5A at 6-11) She also stated that Respondent had never been physical with her before that day, and she did not recall him ever having threatened her in the past. (Dept. Ex. 5A at 12)

In the [REDACTED] (Dept. Ex. 6), Person A provided essentially the same description of events that she gave in the recorded interview. She also mentioned that as a result of being pushed, she

fell to the ground and sustained a scratch to her left elbow, and that Respondent also grabbed her and tore her dress. The photographs in evidence (Dept. Exs. 7a-f), which were taken by the responding officers, show redness and abrasions near her elbow, as well as a tear in the sleeve of her dress. There also are photographs depicting the cracked screen of her cell phone, including one that shows a screenshot of a canceled call to 911 at 12:31 PM.

Respondent denied hitting or injuring Person A. He testified that prior to that day, he had been ignoring her calls and texts (see Resp. Ex. B, screenshots of her calls and texts to his phone) because he did not want to be [REDACTED] with her any longer. At the time of the incident, Respondent was at his home, inside a gated community, with his girlfriend. Person A showed up, unannounced, and repeatedly rang his bell and banged on his front door. Respondent came out through the garage and asked Person A what she was doing there. She said she wanted to come in, but Respondent told her no. Person A tried to walk in through the garage, so he held his arms out to his side in order to block her. According to Respondent, that was the only physical contact between them; he did not push her to the ground, tear her dress, or cause any injury. Respondent claimed that he did not see Person A try to call 911, and he denied grabbing her phone away to prevent her from making a call. Respondent also testified that he did not throw her phone to the ground, and that the cracks to the screen were present before the incident occurred. (Tr. 436-40, 447, 454-56, 458 59, 514, 524-25, 539, 585)

Since she refused to leave, Respondent, himself, called 911. An “event detail report” [REDACTED] confirms that Respondent called 911 at 12:32:52 (Resp. Ex. C). According to the report, the caller stated that there was a woman there who wouldn’t leave. The caller then hung up without providing any further information. Respondent testified that police did respond to the location after Person A had departed. About two hours later the same officer returned. He said, “You are not going to believe this,” and told Respondent that Person A was claiming he

broke her phone. [REDACTED]

(Tr. 441, 456-57, 459, 464, 538, 541)

Even though Person A did not appear to testify, I found her recorded statement to Department investigators to be credible. She provided a detailed and logical account of what occurred, and calmly answered the investigators' questions willingly. Her oral statement was essentially consistent with the narrative she provided in the [REDACTED]. Further, the photographs of her injured elbow, torn dress, and damaged cell phone provided corroboration for her account. The screenshot of her canceled 911 call supports her version of events as well. Additionally, Captain Bohannon confirmed that there were marks and redness on her arm and damage to her phone.

Respondent's version of events, in contrast, was far less persuasive. He maintained that he did not push Person A to the ground and that she was not injured in any way, which is contradicted by the evidence of the abrasions on Person A's arm and her torn dress. Respondent denied that he interfered with Person A's attempt to call 911, or that she even tried to make a call, but the screenshot of her phone indicates otherwise. Respondent testified that he, himself, called 911, and the records do support that this call was made. However, the time of that call was listed as 12:32:52, subsequent to the time of Person A's attempted call at 12:31 PM, which suggests that Respondent may have been calling 911 only because he first saw Person A trying to make such a call.

As such, I credit Person A's description of what transpired, and reject Respondent's self-serving denials. Also, I find that the investigation was not driven by racial animosity toward Respondent. Rather, the Department's involvement in this matter was initiated by the complaint of Person A [REDACTED], which prompted an investigation by the [REDACTED] Police Department leading to Respondent's arrest.

Specification 1 charges Respondent with wrongfully engaging in a physical altercation with Person A. The credible evidence has established that Respondent confronted Person A and pushed her to the ground, causing her to scrape her elbow. Even if Respondent was angry that Person A was ringing his bell, banging on his door, and refusing to leave, his reaction was not appropriate to the situation. Without justification, Respondent chose to respond physically to Person A's presence, and I find him guilty of Specification 1.

Specifications 2 and 3 charge Respondent with wrongfully interfering with Person A's attempt to call 911 by grabbing her phone from her hand and throwing it to the ground, thereby damaging the phone's screen. Again, the credible evidence has established that after Respondent pushed Person A to the ground, she tried to call 911 from her cell phone. Respondent took the phone from her hand, canceled the call, and threw the phone to the ground, causing damage to the screen; this damage was memorialized in the photographs in evidence, as was the canceled 911 call. When Person A tried to retrieve her phone from the ground, Respondent again grabbed it and threw it inside her vehicle. Person A eventually drove off and reported the incident to the police in-person at the precinct. Because he interfered with Person A's ability to call 911, and damaged her phone in the process, I find Respondent guilty of Specifications 2 and 3.

Specification 4 alleges that Respondent wrongfully interfered with the Department's investigation into this matter by naming a neighbor as a witness even though that neighbor did not observe what occurred. Sergeant Marni Schwager testified that she took over the case from a colleague who left the Department. She interviewed Respondent on February 24, 2017, and he provided the name of his next door neighbor, Person B, as someone who "may have observed the incident." Based on this information, investigators from her team had to take the time to travel to [REDACTED] to interview Person B, only to hear her deny that she witnessed what occurred.

(Tr. 310, 322-327)

Respondent testified that he cooperated with the investigation of this matter, and denied that he interfered with it in any way. (Tr. 470-71)

The credible evidence has failed to prove that Respondent committed any misconduct in providing the name Person B to investigators. According to the Department Advocate's own witness, Respondent merely suggested that Person B "may have" observed the incident; there was no testimony that Respondent definitively stated to Sergeant Schwager that Person B did see what transpired. Further, just because Person B denied being a witness doesn't necessarily mean she really didn't see any part of the incident; she may, for instance, have simply decided that she did not want to get involved. As such, the record has not established that Respondent wrongfully interfered with the Department's investigation into this matter, and I find him not guilty of Specification 4.

Case No. 2016-16449

Specifications 1 and 2 deal with an incident that occurred on May 17, 2015. It is alleged that Respondent was discourteous to Lieutenant Lipke when the lieutenant attempted to review the video footage from Respondent's vehicle. Respondent also is charged with neglecting to make proper entries in his activity log regarding summonses he had issued that day.

Lieutenant Lipke, who was Highway 3's ICO at the time of the incident, testified that when he saw Respondent enter the command at about 1320 hours, he asked to inspect the video footage from the officer's Mobile Video Recorder ("MVR"). Lieutenant Lipke explained that this was the type of random review he did equally with all of the officers. Rather than go to his RMP and reboot the computer, Respondent went to the lounge. When Lieutenant Lipke went to the lounge to look for him, Respondent stated that he was on meal, and held out the keys to his vehicle by dangling them in front of the lieutenant. Lieutenant Lipke took the keys, and also asked Respondent for his summonses, which Respondent held out to him in the same way. The

lieutenant neglected to ask for Respondent's memo book because he was taken aback by Respondent's "hostile" behavior, and started walking toward Respondent's vehicle to inspect the video. (Tr. 146-147, 150-152, 157, 178, 189-191)

As the lieutenant was walking toward the vehicle, Respondent came from behind and asked if he could have his summonses back since he had not yet entered them into his memo book. Lieutenant Lipke testified that officers are supposed to make their memo book entries right after each traffic stop. Rather than return the summonses, the lieutenant asked Respondent for his memo book in order to sign it. According to Lieutenant Lipke, Respondent refused to provide his memo book and, in a very loud and belligerent voice, said to the lieutenant, "What the hell is this? Is this a goddamn race thing?" Lieutenant Lipke testified that he felt intimidated and scared. He also was surprised by this accusation and pointed to his own hand, meaning, "Are you kidding me? I'm black just like you." (Tr. 153-157, 163, 183)

Lieutenant Lipke entered the vehicle on the passenger side, while Respondent stood outside the passenger door. Respondent wanted answers from the lieutenant as to why he was doing this, and he refused to back away. The lieutenant testified that he was afraid, told Respondent "that's enough, you went way over the line," and ordered Respondent to go back inside the command, which he did. Lieutenant Lipke was so upset that he exited the vehicle and returned to his office, where he met with the squad sergeant and union delegate about what had transpired. They persuaded the lieutenant to issue Respondent a CD rather than suspend him for insubordination. They also retrieved Respondent's memo book for the lieutenant at about 1440 hours, by which time the summons information had already been entered. Lieutenant Lipke signed the memo book and returned it to Respondent at 1520 hours. The lieutenant testified that he believed he returned the summonses to Respondent after signing the memo book. (Tr. 158-162, 183, 188)

The lieutenant acknowledged that he has since been removed from his position as ICO at Highway 3, and that he has pled guilty to a disciplinary matter where he forfeited penalty time. Lieutenant Lipke also confirmed that he is a defendant in a civil lawsuit filed by Respondent against the Department alleging inappropriate targeting of Respondent, though the lieutenant was unsure as to the details of the accusations. (Tr. 166, 169, 171, 175)

Sergeant Khazin testified that around September and October of 2015, Lieutenant Lipke would regularly inquire as to what Respondent was doing, while not asking the same about other officers. (Tr. 342-46)

Respondent testified that he was inside the lounge on meal along with four or five other officers. Lieutenant Lipke entered and said he needed the keys to Respondent's RMP in order to review his video footage. Respondent handed him the keys, then followed Lieutenant Lipke to the car and asked if anything was wrong. The lieutenant entered the vehicle without answering and closed the door. Respondent denied raising his voice or arguing with the lieutenant, stating that he simply returned to the lounge without incident. (Tr. 479-81, 549, 552, 554)

Respondent testified that by the time of his encounter with the lieutenant, he may already have written down some of the summons information in his activity log, but not necessarily all of it. Respondent explained that occasionally there are time constraints in the field that make it impractical to record the information immediately. It was Respondent's intention to complete his entries after he was finished eating. Respondent confirmed that the lieutenant had the delegate retrieve Respondent's memo book about a half hour into his meal. The memo book, which was not missing any entries, was returned to Respondent about an hour after his tour ended, even though the lieutenant had signed it an hour earlier; Respondent remained at the precinct during that time without collecting any overtime. (Tr. 482-84, 549-53) Respondent

described his relationship with Lieutenant Lipke as “intimidating.” He also claimed that he believed the lieutenant was Korean, and not African American. (Tr. 434, 484, 547)

Specification 1 charges Respondent with being discourteous toward Lieutenant Lipke when the lieutenant requested Respondent’s memo book. Section 212-08 (3) of the Patrol Guide requires a uniformed member of service to “submit activity log to supervising officer for inspection and review upon request.” Lieutenant Lipke came across as serious and sincere as he described his interaction with Respondent, and his account of their dispute was logical. In contrast, Respondent’s version of events was unconvincing. Respondent denied that he raised his voice or argued with the lieutenant, but if the encounter were as innocuous as Respondent described, there would have been no reason for the squad sergeant and union delegate to get involved afterward.

Even though the lieutenant is a defendant in a lawsuit that was filed by Respondent, I am not persuaded that the lieutenant’s testimony at this trial, or his actions back on May 17, 2015, were motivated by racial bias against Respondent. Rather, Lieutenant Lipke, the ICO, was performing a random review of the MVR and made a valid request to see Respondent’s memo book in conjunction with that review. Instead of simply handing the lieutenant his memo book, Respondent refused to do so, and, without legitimate provocation, screamed accusations of racial bias at the lieutenant. The credible evidence has established that Respondent behaved discourteously toward Lieutenant Lipke, and I find him guilty of Specification 1.

Specification 2 charges Respondent with neglecting to make proper entries in his activity log. Respondent testified that he was unsure how much of his summons activity had already been recorded in his memo book at the time of his encounter with Lieutenant Lipke. He also explained how due to time constraints while out on patrol, there are times where it’s impractical to make complete activity log entries contemporaneously with the issuance of a summons.

Lieutenant Lipke did not actually see what was inside Respondent's activity log at the time of their encounter. As such, the Department Advocate's case relies on the lieutenant's claim that when he asked Respondent why he wanted his summonses back, Respondent answered that he had not yet entered the information into his memo book. However, whatever statement Respondent may have made about his memo book took place during a conversation in which Lieutenant Lipke was admittedly shaken up by Respondent's behavior. The lieutenant had no first-hand knowledge of what information had already been entered, and so the evidence against Respondent was somewhat speculative. Moreover, when Respondent's memo book was given to Lieutenant Lipke about an hour and twenty minutes later, the summons information was, in fact, entered into the memo book. As such, the record has failed to establish, by a preponderance of the credible evidence, that under these particular circumstances Respondent neglected to make the proper memo book entries, and I find him not guilty of Specification 2.

Specification 3 charges Respondent with sleeping inside the Highway 3 officer's lounge while the Queens County District Attorney's Office was attempting to reach him to sign an affidavit on one of Respondent's arrests. Lieutenant Marc Levine testified that he was the desk officer at Highway 3 on July 12, 2015. At about 1100 hours that morning, a paralegal from the DA's Office called the command trying to locate Respondent. The paralegal explained that starting at 1029 hours she had called Respondent several times at the number he provided, but Respondent had not answered. The paralegal needed Respondent to sign and fax back an affidavit on a DWI arrest he had made. Lieutenant Levine sent his telephone switchboard operator, Officer Michael Rosenberg, to the officer's lounge in order to locate Respondent and deliver the message. (Tr. 208-212, 234-235, 240)

According to Lieutenant Levine, Officer Rosenberg returned to the desk and informed the lieutenant that Respondent was in the lounge and that he wasn't alert. Respondent came to the

desk a short while afterward. At approximately 1135 hours, Respondent spoke with the paralegal, and he faxed over his signed affidavit ten minutes later. Shortly after that, a supervisor from the DA's Office called Lieutenant Levine to complain about the delay in processing the arrest that had been caused by Respondent. (Tr. 214-215, 224 225, 233-236)

Lieutenant Levine acknowledged being a named defendant in the lawsuit filed by Respondent. He denied being involved in any effort to get Respondent out of the command. (Tr. 216, 230)

Officer Michael Rosenberg testified that after someone from the DA's Office called the command, he went to the police lounge to alert Respondent that they were trying to contact him. The lights inside the lounge were off, and Respondent was sleeping in a recliner. Officer Rosenberg nudged him awake, and told Respondent about the call from the DA's Office. Officer Rosenberg returned to the desk, and some time later Respondent came to the desk as well. (Tr. 246-249, 254)

Sergeant Khazin testified about possible bias by Lieutenant Levine against Respondent. According to the sergeant, in September of 2015 Lieutenant Levine instructed him to make sure that Respondent did not receive a new or unmarked vehicle, and that he be given the post directly in front of the precinct, which presumably would make things more difficult for Respondent. The sergeant also testified that around March of 2016, Lieutenant Levine instructed him to impose limitations on Respondent's ability to eat at the desk, and to place limitations on the types of excusals available to Respondent. (Tr. 337-342, 363-67)

Respondent testified that was not sleeping in the lounge that day; he was sitting in a chair at a table, possibly texting. He claimed that a call from the DA's Office came through on his cell phone, but the call was dropped because of bad service in the lounge. Respondent maintained that no one came to the lounge to inform him that the DA's Office was trying to reach him. He

also testified that the arrest was processed within an hour of his initial contact with the DA's Office, a relatively quick turnaround. (Tr. 485-88, 561-62)

According to Respondent, there was a special procedure in place just for him whereby the DA's Office was required to notify Lieutenant Lipke after each of Respondent's arrests. Respondent explained that this policy stemmed from a disagreement he had with the DA's Office following a DWI arrest: the prosecutor wanted him to include certain language regarding the appearance of the defendant in the arrest affidavit, but Respondent refused because he did not, in fact, make such observations. (Tr. 485-86, 558)

Lieutenant Levine came across as experienced and professional on the stand as he recounted the events of July 12. Despite being a defendant in Respondent's lawsuit, Lieutenant Levine gave no indication of having any bias against Respondent. Similarly, Officer Rosenberg testified in a straight-forward manner about what he observed. The officers did not invent a situation in order to implicate Respondent; rather, the incident was initiated with a complaint from a paralegal at the DA's Office regarding Respondent's non-responsiveness, and a supervisor followed up with an additional call as well.

By failing to remain alert, Respondent missed repeated calls from the paralegal, who was waiting for Respondent to sign and fax his arrest affidavit. As a result, there was a delay of approximately one hour before the DA's Office was able to move forward with the arrest processing. Accordingly, I find Respondent guilty of Specification 3.

Specification 4 charges Respondent with neglecting to monitor his radio on May 27, 2016, which resulted in his failure to respond to an open job. Deputy Inspector Ge, who at this time was the Executive Officer at the Highway District, testified that he investigated the allegation by speaking with the patrol supervisor, Sergeant Santiago, and by reviewing the radio transmissions. According to Deputy Inspector Ge, at approximately 1254 hours there was a

vehicle collision on the Brooklyn-Queens Expressway near the Kosciuszko Bridge. Sergeant Santiago went over the radio and instructed central to have Respondent respond to that job. The dispatcher raised Respondent on the radio, and initially he acknowledged the call, indicating that he wanted to take a delayed meal. However, when the dispatcher repeatedly tried to get Respondent back on the radio about the job, Respondent did not respond. (Tr. 54-56, 61-76)

A recording of the radio transmissions (Dept. Ex. 4) confirms the above communications, including the dispatcher informing Respondent that on the authority of the sergeant he is assigned to the accident on the BQE. When Sergeant Santiago has central confirm whether Respondent has acknowledged the job, Respondent states that he is taking his meal delayed at Highway 3. The sergeant and dispatcher again try to raise Respondent on the radio, but there is no response. Sergeant Santiago repeats his instruction that "301" (Respondent's post designation) be redirected to handle the job on the BQE, but Respondent fails to acknowledge repeated calls to him during the final 25 seconds of the recording. Deputy Inspector Ge added that there also was no subsequent radio response by Respondent, even after the recording ends. (Tr. 74-75) After Respondent's failure to respond, Sergeant Santiago located him back at the stationhouse. (Tr. 138)

Respondent testified that he responded to multiple jobs that day, while also going to traffic court in the morning. Respondent explained that he had just returned from a line of duty injury, and was unfamiliar with the new accident reporting system that had been put in place for entering information directly onto the vehicle's computer. He went back to the command in order to get some help from the delegate, who was also the training officer, regarding the use of the computer system, which is where he was at the time the radio calls for him came through. Respondent testified that it was a stressful day, and he was not sure if he even heard the radio

transmissions, since he was in the garage area of the precinct and was focused on inputting the accident he had handled earlier that day. (Tr. 488-496, 564-66)

Section 202-21 (19) of the Patrol Guide requires a police officer to monitor his portable radio. The testimony of Deputy Inspector Ge, as corroborated by the radio transmissions themselves, establishes that Respondent failed to do so on May 27, 2016. The dispatcher clearly informed him that on the authority of the sergeant, he was assigned to the job on the BQE. After stating that he wanted to take a delayed meal, Respondent neglected to acknowledge repeated follow-up calls from the sergeant and the dispatcher, who were awaiting confirmation from Respondent. As such, the credible evidence has established that Respondent failed to monitor his radio, and I find him guilty of Specification 4.

Specification 5 charges Respondent with being absent from assignment without permission for approximately one hour on June 2, 2016. Deputy Inspector Ge investigated this incident as well. While looking into an allegation that Sergeant Khazin of Highway 3 had been off post, it was discovered that Respondent was with the sergeant at Martha's Bakery on Bell Boulevard. Specifically, the Automatic Vehicle Location ("AVL") indicated that Respondent was at that location from approximately 0911 to 1020 hours, while Sergeant Khazin arrived at 0920. When questioned why he was off-post so long, Respondent informed Deputy Inspector Ge that Sergeant Khazin had instructed him to respond to that location so that the two of them could discuss the sergeant's upcoming trial testimony in traffic court. (Tr. 76-80, 82-85, 130)

Deputy Inspector Ge confirmed that it is permissible for an officer to take a 10-15 minute personal break off the highway. However, according to the deputy inspector, an officer on such a break is supposed to notify central or the command. Here, neither Respondent nor the sergeant made any such notification. (Tr. 81, 86-87, 131)

Sergeant Khazin testified that he did meet Respondent at Martha's bakery on June 2. The sergeant explained that Respondent was the last officer he needed to inspect that day. He called Respondent on his cell phone to tell him to "stand by", and drove to meet him at the bakery. Sergeant Khazin was scheduled to testify in traffic court later that day, and used the opportunity to obtain advice from Respondent regarding his testimony; he did not, however, ask any of the other officers he inspected for such advice. The sergeant also inspected Respondent's memo book before leaving, and admonished Respondent for not making a notation that he was on a personal. They spent approximately 30-40 minutes together at the bakery. During that time, one job came over the radio, a 10-10 for a person walking on the highway, which Respondent answered. According to Sergeant Khazin, it is permissible for officers to take personal breaks off the highway, and they are not required to call it in. (Tr. 355-58, 362, 377-88, 395)

Sergeant Khazin also testified that around July of 2016, Deputy Inspector Ge told him that Respondent was the worst cop in Highway, and that the sergeant should never take advice from Respondent. (Tr. 353-54)

Respondent confirmed that he took his personal at Martha's Bakery, less than half a mile off the highway. He acknowledged that he did not put his location over the radio. Respondent testified that he did not know that Sergeant Khazin was coming to the location until the sergeant called and instructed him to stand by. Respondent was at the location less than 15 minutes when Sergeant Khazin arrived, and the sergeant asked him questions about testifying in traffic court. Respondent estimated that he was at the bakery for approximately 25-30 minutes, until he was "released by Sergeant Khazin." When the sergeant was finished asking him traffic court questions, Respondent left and responded to a 10-10 call for a person walking on the highway. Respondent testified that Sergeant Khazin did not admonish him about his memo book that day. (Tr. 498-503, 569-77)

The record has failed to establish, by a preponderance of the credible evidence, that Respondent was absent from his post without permission for approximately one hour. Respondent initially was at the bakery for less than 15 minutes on a personal break. I credit the testimony of Respondent and Sergeant Khazin that the sergeant then instructed Respondent to remain at the location, so that they could discuss the sergeant's upcoming traffic court testimony. Respondent obeyed that order, and spent some additional time there with Sergeant Khazin. Under the totality of these particular circumstances, Respondent's decision to remain off-post at the location was not misconduct, and I find him not guilty of Specification 5.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record.

The Department Advocate recommends that Respondent forfeit 30 suspension days previously served, 20 vacation days, and be placed on dismissal probation for a period of one year, a reasonable recommendation under the totality of the circumstances.

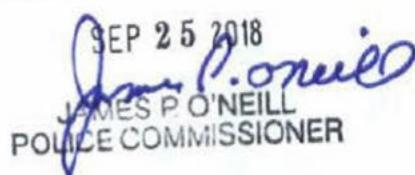
On the one hand, this tribunal is mindful of Respondent's history in an elite unit. Also, Respondent has been found not guilty of three of the charges against him. However, Respondent has been found guilty of the remaining seven specifications, for conduct on five separate dates. Three of those guilty findings stem from an off-duty physical altercation, where Respondent pushed Person A to the ground causing her to suffer abrasions to her elbow. He also damaged her cell phone and prevented her from calling 911 during that incident. On a separate

date, Respondent was discourteous and hostile toward Lieutenant Lipke, to the point where the lieutenant was in fear. On another occasion, Respondent failed to remain alert while the DA's Office was trying to reach him, causing a delay in their ability to process his arrest. Respondent also is guilty of failing to monitor his radio, and failing to make an entry in his activity log regarding the operability of his vehicle's recording equipment.

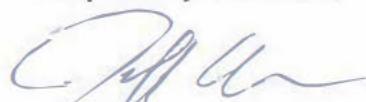
In *Disciplinary Case No. 2016-2016* (Oct. 6, 2017), a three-year probationary police officer with no disciplinary record negotiated a penalty of 30 vacation days and one-year dismissal probation for engaging in a physical and verbal altercation with [REDACTED], during which he prevented and interfered with a call being placed to 911. In *Disciplinary Case No. 2014-11882* (Nov. 1, 2017), an eight-year officer with no disciplinary record negotiated a penalty of 30 suspension days already served and one-year dismissal probation for engaging in a physical and verbal altercation with [REDACTED], and for wrongfully damaging her property.

Taking into account all of the facts and circumstances presented here, including the serious nature of the physical altercation, Respondent's courtesy to a supervisor, and his other assorted misconduct, I recommend that Respondent forfeit thirty-one (31) suspension days previously served, twenty (20) vacation days, and that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

**APPROVED**

SEP 25 2018  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER DANA HARGE  
TAX REGISTRY NO. 933832  
DISCIPLINARY CASE NOS. 2016-15210, 2016-16225 &  
2016-16449

Respondent was appointed to the Department on January 20, 2004. On his last three annual performance evaluations, he received a 3.0 overall rating of "Competent" in 2016, a 3.5 rating of "Highly Competent/Competent" in 2015, and a 4.0 rating of "Highly Competent" in 2014. Respondent has received one medal for Meritorious Police Duty.

[REDACTED]

Respondent has no formal disciplinary history. In connection with the charged misconduct in Case No. 2016-16225, Respondent was suspended from August 6, 2016 to September 5, 2016 and subsequently placed on modified assignment. He also was placed on Level II Discipline Monitoring on September 13, 2016. Monitoring remains ongoing.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials